JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers

DISTRICT OFFICE: NEW YORK DISTRICT (CENAN) FILE NUMBER: 2005-00586 PROJECT LOCATION INFORMATION: New York State: County: Oueens Center coordinates of site (latitude/longitude): lat:40-44-26.9880 Ion:73-56-26.0160 Approximate size of area (parcel) reviewed, including uplands: 5 acres. Name of nearest waterway: Dutch Kills Name of watershed: NEWTOWN CREEK JURISDICTIONAL DETERMINATION Completed: Desktop determination [X]Date: June 20, 2005 Site visit(s) [] Date(s): Jurisdictional Determination (JD): [X] Preliminary JD - Based on available information, [X] there appear to be (or) [] there appear to be no "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331). [] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331). Check all that apply: [] There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: [] There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: [] There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area. Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction. BASIS OF JURISDICTIONAL DETERMINATION: A. Waters defined under 33 CFR part 329 as "navigable waters of the United States": [X] The presence of waters that are subject to the ebh and flow of the tide and/or arc presently used, or have been used in the past, or may he susceptible for use to transport interstate or foreign commerce. B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States": [X] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebh and flow of the tide. [] (2) The presence of interstate waters including interstate wetlands¹. [] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

[] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

[] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign eommerce.

[] (iii) which are or could be used for industrial purposes by industries in interstate commerce.

[] (4) Impoundments of waters otherwise defined as waters of the US.

[] (5) The presence of a tributary to a water identified in (1) - (4) above.

[] (6) The presence of territorial seas.

[] (7) The presence of wetlands adjacent2 to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationalc for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: <u>Dutch Kill is tributary to Newtown Creek and the East river</u> which are both navigable.

| | Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329) | | |
|---|---|--|--|
| | [] Ordinary High Water Mark indicated by: | [X] High Tide Line indicated by: | |
| | [] clear, natural line impressed on the hank | [] oil or seum line along shore objects | |
| | [] the presence of litter and debris | [] fine shell or debris deposits (foreshore) | |
| | [] changes in the character of soil | [] physical markings/characteristics | |
| | [] destruction of terrestrial vegetation | [] tidal gages | |
| | | | |
| | [] shelving | [X] other: Applicant's drawings & photos. | |
| | [] other: | | |
| | IV) Moon High Water Mark indicated by | | |
| | [X] Mean High Water Mark indicated by: [X] survey to available datum; [] physical markings; [] vegetation lines/changes in vegetation types. | | |
| | [25] survey to available datains, [] physical markings, [] vegetation mies/changes in vegetation types. | | |
| | [] Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by: | | |
| | Basis For Not Asserting Jurisdiction: | | |
| | [] The reviewed area consists entirely of uplands. | | |
| | [] Unable to confirm the presence of waters in 33 CFF | R part 328(a)(1, 2, or 4-7). | |
| | [] Headquarters declined to approve jurisdiction on the | e basis of 33 CFR part 328.3(a)(3). | |
| [] The Corps has made a case-specific determination that the following waters present on the site are r | | | |
| | the United States: | | |
| | [] Waste treatment systems, including treatment po | nds or lagoons, pursuant to 33 CFR part 328.3. | |
| | | | |
| [] Artificially irrigated areas, which would revert to upland if the irrigation ceased. [] Artificial lakes and ponds created by excavating and/or diking dry land to collect and | | | |
| | | such purposes as stock watering, irrigation, settling basins, or | |
| | rice growing. | such purposes as stock watering, irrigation, setting basins, or | |
| | [] Artificial reflecting or swimming pools or other | small appropriatel hadian of water arouted | |
| | | | |
| | by excavating and/or diking dry land to retain w | | |
| | [] Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for | | |
| | | ess and until the construction or excavation operation is | |
| | | s the definition of waters of the United States found at 33 CFR | |
| | 328.3(a). | | |
| | [] Isolated, intrastate wetland with no nexus to inte | | |
| | | Natural Resources Conservation Service. Explain rationale: | |
| | [] Non-tidal drainage or irrigation ditches exeavated | d on dry land. Explain rationale: | |
| | [] Other (explain): | | |
| | | | |
| DATA | REVIEWED FOR JURISDICTIONAL DETERMINAT | ION (mark all that apply): | |
| D.11111 | [X] Maps, plans, plots or plat submitted by or on behal | · · · · · · · · · · · · · · · · · · · | |
| | Data sheets prepared/submitted by or on behalf of th | | |
| | [] This office concurs with the delineation report, d | | |
| | [] This office does not concur with the delineation | | |
| | | report, dated , prepared by (company). | |
| | [] Data sheets prepared by the Corps. | | |
| | [] Corps' navigable waters' studies: | | |
| | [] U.S. Geological Survey Hydrologic Atlas: | | |
| | [] U.S. Geological Survey 7.5 Minute Topographie ma | | |
| | [] U.S. Geological Survey 7.5 Minute Historic quadran | | |
| | [] U.S. Geological Survey 15 Minute Historic quadrang | • | |
| | [] USDA Natural Resources Conscrvation Service Soil | Survey: | |
| | [] National wetlands inventory maps: | | |
| | [] State/Local wetland inventory maps: | | |
| | [] FEMA/FIRM maps (Map Name & Date): | | |
| | [] 100-year Floodplain Elevation is: (NGVD) | | |
| | [] Aerial Photographs (Name & Date): | | |
| | [X] Other photographs: November 19, 2004 | | |
| | Advanced Identification Wetland maps: | | |
| | Sire visit/determination conducted on: | | |
| | [] Applicable/supporting case law: | | |
| | [] Other information (please specify): | | |
| | [] | | |

Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, heach dunes, and the like are also adjacent.

JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers

DISTRICT OFFICE: NEW YORK DISTRICT (CENAN) FILE NUMBER: 2005-00660 PROJECT LOCATION INFORMATION: State: New York County: Schoharie Center coordinates of site (latitude/longitude): lat:42-40-54.9840 lon:74-27-7.9920 Approximate size of area (parcel) reviewed, including uplands: 39.3 acres. Name of nearest waterway: Unnamed Tributary Name of watershed: MOHAWK RIVER JURISDICTIONAL DETERMINATION Completed: Desktop determination Date: Site visit [X]Dates: August 3, 2005 Jurisdictional Determination (JD): [] Preliminary JD - Based on available information, [] there appear to be (or) [] there appear to be no "waters of the United Stares" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331). [X] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331). Check all that apply: [] There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: [X] There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: 2.70 acres. [X] There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area. [X] Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction. BASIS OF JURISDICTIONAL DETERMINATION: A. Waters defined under 33 CFR part 329 as "navigable waters of the United States": [] The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States": [] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. [] (2) The presence of interstate waters including interstate wetlands¹. [] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affeet interstate commerce including any such waters (check all that apply): [] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes. [] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce. [] (iii) which are or could be used for industrial purposes by industries in interstate commerce. [] (4) Impoundments of waters otherwise defined as waters of the US. [X] (5) The presence of a tributary to a water identified in (1) - (4) above. [] (6) The presence of territorial seas. [X] (7) The presence of wetlands adjacent to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Wetlands on the site are associated with unnamed tributaries to Cobleskill Creek, which drains to Schoharie Creek and ultimately discharges into the Mohawk River, a navigable waterbody.

| Lateral Extent of Jurisdiction: (Reference: 33 CFR | parts 328 and 329) | | | |
|---|--|--|--|--|
| [X] Ordinary High Water Mark indicated by: | [] High Tide Line indicated by: | | | |
| [X] clear, natural line impressed on the bank | [] oil or scum line along shore objects | | | |
| [X] the presence of litter and debris | [] fine shell or debris deposits (foreshore) | | | |
| [X] changes in the character of soil | [] physical markings/characteristics | | | |
| [X] destruction of terrestrial vegetation | [] tidal gages | | | |
| | •• | | | |
| [] shelving | [] other: | | | |
| [] other: | | | | |
| I I Maon High Water Mark indicated his | | | | |
| [] Mean High Water Mark indicated by: | | | | |
| [] survey to available datum; [] physical markings; [] vegetation lines/changes in vegetation types. | | | | |
| [X] Wetland boundaries, as shown on the attached wet Male Associates, P.C. | tland delineation map and/or in a delineation report prepared by: C.T. | | | |
| Basis For Not Asserting Jurisdictiou: | | | | |
| [] The reviewed area consists entirely of uplands. | | | | |
| [] Unable to confirm the presence of waters in 33 CF. | R part 328(a)(1 2 or 4-7) | | | |
| [] Headquarters declined to approve jurisdiction on the | | | | |
| | that the following waters present on the site are not Waters of | | | |
| | that the following waters present on the site are not waters of | | | |
| the United States: | | | | |
| [] Waste treatment systems, including treatment po | | | | |
| [] Artificially irrigated areas, which would revert to upland if the irrigation ceased. | | | | |
| [] Artificial lakes and ponds created by excavating and/or diking dry land to collect and | | | | |
| • | such purposes as stock watering, irrigation, settling basins, or | | | |
| rice growing. | | | | |
| [] Artificial reflecting or swimming pools or other | | | | |
| by excavating and/or diking dry land to retain w | | | | |
| | dental to construction activity and pits exeavated in dry land for | | | |
| the purpose of obtaining fill, sand, or gravel unl | ess and until the construction or excavation operation is | | | |
| ahandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR | | | | |
| 328.3(a). | | | | |
| [X] Isolated, intrastate wetland with no nexus to int | ierstate commerce. | | | |
| [] Prior converted eropland, as determined by the Natural Resources Conservation Service. Explain rationale: | | | | |
| [] Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale: | | | | |
| [] Other (explain): | | | | |
| | | | | |
| DATA REVIEWED FOR JURISDICTIONAL DETERM | MINATION (mark all that apply): | | | |
| [X] Maps, plans, plots or plat submitted by or on behalf | | | | |
| [X] Data sheets prepared/submitted by or on behalf of | | | | |
| | dated June 23, 2005, prepared by: C.T. Male, Associates, P.C. | | | |
| [] This office does not concur with the delineation | The state of the s | | | |
| Data sheets prepared by the Corps. | , property by (company). | | | |
| [] Corps' navigable waters' studies: | | | | |
| [] U.S. Geological Survey Hydrologic Atlas: | | | | |
| [X] U.S. Geological Survey 7.5 Minute Topographic m | TAPEC: | | | |
| | • | | | |
| [] U.S. Geological Survey 7.5 Minute Historic quadran | | | | |
| [] U.S. Geologieal Survey 15 Minute Historic quadran | | | | |
| [X] USDA Natural Resources Conservation Service Sol | ii Survey: | | | |
| [X] National wetlands inventory maps: | | | | |
| [X] State/Local wetland inventory maps: | | | | |
| [X] FEMA/FIRM maps (Map Name & Date): | | | | |
| [] 100-year Floodplain Elevation is: (NGVD) | | | | |
| [X] Acrial Photographs (Name & Date): | | | | |
| [X] Other photographs (Date): 3 August 2005 | | | | |
| [] Advanced Identification Wetland maps: | | | | |
| [] Site visit/determination conducted on: | | | | |
| [] Applicable/supporting case law: | | | | |
| Other information (please specify): | | | | |
| · · · · · · · · · · · · · · · · · · | | | | |

Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

JURISDICTIONAL DETERMINATION

U.S. Army Corps of Engineers

DISTRICT OFFICE: NEW YORK DISTRICT (CENAN) FILE NUMBER: 2005-01021 PROJECT LOCATION INFORMATION: New York State: County: Westchester Center coordinates of site (latitude/longitude): lat: 41-15-9.3960 lon: 73-30-4.2480 Approximate size of area (parcel) reviewed, including uplands: 27 acres. Name of nearest waterway: Saw Mill River Name of watershed: LONG IS. SOUND, BRONX WESTCHESTER COUNTY JURISDICTIONAL DETERMINATION Completed: Desktop determination [X]Date: Oetober 12, 2005 Site visit(s) [] Date(s): Jurisdictional Determination (JD): [X] Preliminary JD - Based on available information, there appear to be "waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331). [] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331). Check all that apply: [] There are "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: [] There are "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: [] There are "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area. [] Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction. BASIS OF JURISDICTIONAL DETERMINATION: A. Waters defined under 33 CFR part 329 as "navigable waters of the United States": [] The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. B. Waters defined nnder 33 CFR part 328.3(a) as "waters of the United States": [] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. [] (2) The presence of interstate waters including interstate wetlands. [] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affeet interstate commerce including any such waters (check all that apply): [] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(I) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why

[] (4) Impoundments of waters otherwise defined as waters of the US. [X] (5) The presence of a tributary to a water identified in (1) - (4) above.

[] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
[] (iii) which are or could be used for industrial purposes by industries in interstate commerce.

[] (7) The presence of wetlands adjacent2 to other waters of the US, except for those wetlands adjacent to other wetlands.

the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination: Water body is a non-tidal portion of the Saw Mill River,

which flows to Long Island Sound, which is navigable.

[] (6) The presence of territorial seas.

| [X] | Ordinary High Water Mark indicated hy: Ordinary High Water Mark indicated hy: [X] clear, natural line impressed on the bank] the presence of litter and debris] ehanges in the character of soil] destruction of terrestrial vegetation] shelving] other: | [] High Tide Line indicated by: [] oil or scum line along shore objects [] fine shell or debris deposits (foreshore) [] physical markings/characteristics [] tidal gages [] other: |
|--|--|--|
| | Mean High Water Mark indicated by: [] survey to available datum; [] physical markings | ; [] vegetation lines/changes in vegetation types. |
| [] | Wetland boundaries, as shown on the attached wetland | nd delineation map and/or in a delineation report prepared by: |
| | the United States: [] Waste treatment systems, including treatment pon [] Artificially irrigated areas, which would revert to [] Artificial lakes and ponds created by excavating a retain water and which are used exclusively for since growing. [] Artificial reflecting or swimming pools or other since year by excavating and/or diking dry land to retain was [] Water-filled depressions created in dry land incided the purpose of obtaining fill, sand, or gravel unlead abandoned and the resulting body of water meets 328.3(a). [] Isolated, intrastate wetland with no nexus to inter- | basis of 33 CFR part 328.3(a)(3). at the following waters present on the site are not Waters of ads or lagoons, pursuant to 33 CFR part 328.3. upland if the irrigation ceased. and/or diking dry land to collect and uch purposes as stock watering, irrigation, settling basins, or small ornamental bodies of water created atter for primarily aesthetic reasons. ental to construction activity and pits excavated in dry land for as and until the construction or excavation operation is the definition of waters of the United States found at 33 CFR state commerce. atteral Resources Conservation Service. Explain rationale: |
| [X] [1] [X] [X] [X] [1] [1] [1] [1] [1] [1] [1] [1] [1] [1 | Maps, plans, plots or plat submitted by or on behalf Data sheets prepared/submitted by or on behalf of the [1] This office concurs with the delineation report, date [2] This office does not eoneur with the delineation report, date [3] This office does not eoneur with the delineation report, date [4] This office does not eoneur with the delineation report, date [5] This office does not eoneur with the delineation report, date [6] This office does not eoneur with the delineation report, date [6] This office does not eoneur with the delineation report, date [6] This office does not eoneur with the delineation report, date [7] This office does not end used and used and survey Hydrologic Atlas: U.S. Geological Survey Hydrologic Atlas: U.S. Geological Survey 15 Minute Topographic mate U.S. Geological Survey 15 Minute Historic quadrang USDA Natural Resources Conservation Service Soil in State/Local wetlands inventory maps: State/Local wetlands inventory maps: State/Local wetland inventory maps: FEMA/FIRM maps (Map Name & Date): 100-year Floodplain Elevation is: (NGVD) Aerial Photographs (Name & Date): Other photographs (Date): Advanced Identification Wetland maps: Site visit/determination conducted on: Applicable/supporting case law: Other information (please specify): | of the applicant. e applicant. ated , prepared by (company): eport, dated , prepared by (company): aps: gles: les: |

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.